

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

CITY OF DETROIT,

Plaintiff,

v.

Case No. 24-10775

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Hon. Matthew F. Leitman

Defendants.

(Hearing conducted
virtually using Zoom
Video Communications)

/

STATUS CONFERENCE

BEFORE THE HONORABLE MATTHEW F. LEITMAN
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Friday, May 10, 2024

APPEARANCES:

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1 Detroit, Michigan (*Remote proceedings*)

2 Friday, May 10, 2024

3 at about 2:01 p.m.

4 — — —

5 (Court and Counsel present via Zoom Video
6 Communications.)

7 THE LAW CLERK: The United States District Court
8 for the Eastern District of Michigan is now in session, the
9 Honorable Matthew F. Leitman, United States District Judge,
10 presiding.

11 The Court calls Case No. 24-10775, Detroit v.
12 United States Department of Commerce, et al.

13 Counsel, please state your appearances for the
14 record.

15 MR. FINK: David Fink appearing for plaintiff. And
16 for the benefit of Mr. Smith, I would like to explain that
17 when I speak and when Phil speaks, the sound will be coming
18 through my computer, so it won't be possible, in looking at a
19 recording -- if it is checked later, it won't be possible to
20 see the difference, based on which screen is lit; it's a long
21 way of saying, David Fink.

22 THE COURT: And Mr. Miller is with you, Mr. Fink?

23 MR. MILLER: I am, yes, Your Honor. Philip Miller
24 for City of the Detroit.

25 THE COURT: Are you in the same room with him,

1 Mr. Miller?

2 MR. MILLER: Yes, Your Honor.

3 THE COURT: Can you -- when it comes time for you
4 to speak, will you go closer? It is a little bit hard to
5 hear.

6 MR. MILLER: I will, Your Honor.

7 MR. FINK: He can move closer right now.

8 THE COURT: All right. Who is going to be speaking
9 for the government?

10 MR. DANIEL: Good morning, Your Honor. This is
11 Christian Daniel, with the Department of Justice, on behalf
12 of defendants. I'm here with my co-counsel, Steve Pezzi, as
13 well.

14 THE COURT: All right. Mr. Daniel, will you be the
15 one speaking?

16 MR. DANIEL: Yes, Your Honor.

17 THE COURT: What I wanted to do is get together
18 today and talk about the current dispute over the schedule.
19 So the City filed the complaint and then followed that up
20 with a motion for partial summary judgment on Count 1, a
21 count under the APA. And the government has filed a motion
22 to basically to extend the schedule.

23 And, Mr. Daniel, I just had a couple questions.

24 Aside from the case law and stuff, as a practical
25 matter, is there prejudice to the government and the

1 defendants of proceeding with the current motion?

2 MR. DANIEL: Yes, Your Honor, for two reasons. The
3 first is the agency has been working diligently, since the
4 complaint was filed, to put the administrative record
5 together, but that takes time. It's not just sitting on a
6 shelf. They have to analyze the complaint, do searches back
7 through years, or even decades, of files and determine what
8 needs to constitute the administrative record. So it's just
9 not feasible for the agency to find every possibly relevant
10 document quickly enough, prior to its responsive pleading
11 deadline, in order for counsel to rely on those documents in
12 its response to plaintiff's motion.

13 Moreover, for general party and judicial economy,
14 defendants believe that it doesn't make sense to do piecemeal
15 summary judgment on plaintiff's claims one by one, but rather
16 it would make much more sense to brief them all at same time,
17 once there is an administrative record.

18 THE COURT: All right. Mr. Fink, what about the
19 government's point that it takes time to assemble the
20 administrative record and this is a, potentially, big
21 project?

22 MR. FINK: Well, let me -- thank you, Your Honor.
23 I'd like to speak both to that and to the issue of prejudice.

24 Regarding taking time to complete the record, we
25 have already indicated that we're prepared to agree to

1 a 21-day extension, which would mean -- they've told us they
2 have will the record for us by May 31st. They've indicated
3 that. So we've suggested an extension 12 days past that
4 date, so they will be able to use that time to file their
5 response and to reference that administrative record.

6 I can't -- I -- we, the City of Detroit, has no way
7 of second guessing the federal government on how long it
8 takes them to put the administrative record together. We
9 respect that. But if they can have the record by
10 May 12th -- May 31st, I don't see how they're harmed if they
11 have 12 more days after that. Most of the relevant parts of
12 the administrative record, we think we have already submitted
13 as exhibits in our motion or otherwise referenced in the
14 complaint. I don't think it's going to be hard for them to
15 find it, but I can't speak for that, I could be wrong.

16 The issue of prejudice, though, is a significant
17 question, because the federal government -- I don't see how
18 the federal government is prejudiced if they've got 12 days
19 to respond to our motion, which is on only one count of the
20 complaint, and, in contrast, the City of Detroit, every
21 single day that goes by, might be costing the city money,
22 because we -- the way the funding works -- and I'm not going
23 to get too deep into this, but the way that the funding
24 works, we're talking about not one or two allocations, we're
25 talking about dozens of different federal and state programs

1 that are funded, based upon population estimates. And they
2 are not -- and it's not -- there isn't a fixed point in time,
3 one time a year, a year when all of that's done; it's an
4 ongoing matter. And we don't know when we're -- the
5 limitation occurs. I guess that's an odd way to say it, but
6 we can't say that we know that today, and that's why we
7 didn't bring a motion for preliminary injunction. Because it
8 gets a little bit complicated to say this is that point in
9 time.

10 We know that, at some point, different agencies
11 distribute funds based on various funding formulas and make
12 allocations based on those formulas, and we can't go back,
13 once we get past that, because you're dealing with
14 allocations of funds across the United States and across the
15 state of Michigan.

16 So I may be speaking too long on that point, but we
17 feel we're prejudiced by delay, but we respect the fact that
18 the federal government can only move so quickly, and we're
19 trying to accommodate them. So while the response on -- in
20 the ordinary course of events, the response would have been
21 due on May 22nd, but we've already said that we'll agree to
22 extend to June 12th.

23 THE COURT: All right. Let me just break this down
24 into really simple questions.

25 First, Mr. Daniel, it was a while ago that I looked

1 at these motions. Is it accurate that your position is that
2 you will have the full administrative record prepared by
3 May 31st?

4 MR. DANIEL: That is when the agency anticipates
5 having the record ready, Your Honor, yes.

6 THE COURT: Okay. Mr. Fink, let me come back to
7 you and ask about the litigation perspective of taking these
8 things seriatim, instead of all at once.

9 If you bring this motion on Count 1 now, and you
10 win -- obviously, that's an assumption, I don't know anything
11 about the merits of this case. But let's say you win on that
12 basis.

13 MR. FINK: Yeah, let's say that.

14 THE COURT: Under your view, then, there would have
15 to be some sort of recalculation of the City's share of the
16 government funds. Then later on, you bring a motion on
17 Count 2, let's say you win on that, then we recalculate
18 again. Isn't the most efficient way to handle this to give
19 you a single shot, we resolve all of your claims at once, and
20 there is a single mathematical recalculation, if you win,
21 that factors in and accounts for exactly how much you've won
22 and how much you haven't won?

23 MR. FINK: The -- I respect the Court's question,
24 but it incorporates some assumptions that I think are
25 probably not valid, and that is, we don't yet anticipate that

1 direct funding will come from the decision. What we
2 anticipate is, as these decisions are made, new population
3 estimates will come from the government or be ordered to be
4 issued by the government. Those population estimates may or
5 may not affect actual funding, in a short term. It might be
6 a longer term before the funding is affected. But what is
7 affected immediately is the reputational harm that the City
8 has suffered due to -- and continues to suffer due to the
9 false, we believe, the false impression that comes from these
10 faulty population estimates.

11 So -- but let me -- but let me break down the
12 issue. We have three separate counts -- we have four counts,
13 but we have three separate issues that we are bringing to the
14 Court regarding what we believe to be arbitrary and
15 capricious decisions by the Census Bureau, and they are quite
16 distinguishable.

17 First, the issue of how they handle demolitions,
18 which is what we brought on this motion. The second issue is
19 a little more complex and it relates to how they handle
20 non-permitted new construction in the city, and that's
21 complicated by a couple of issues; one relates to the way the
22 department treats cities that do issue permits versus cities
23 that don't issue permits. And, second, in order to get to
24 that second count of our complaint, we get to an issue of the
25 use of administrative records, et cetera. And we -- I don't

1 want to go too far; I've probably already gone probably too
2 far into that.

3 The third issue is something called the county
4 control or county cap, and that issue requires the Court to
5 get into some historical activities by the agency and how
6 they ended up creating this cap. So there are three
7 distinguishable matters, but what we don't anticipate is that
8 as we -- assuming we win each of these three things, we don't
9 anticipate that we win and then, immediately, new funds are
10 allocated to the City. What we anticipate is that we win and
11 then, eventually, when the agencies come around to the timing
12 for when they are distributing funds, those agencies, who are
13 innocent third-parties -- I don't know if you call them
14 third-parties, but those federal agencies would then be
15 addressing -- would be looking at different numbers than
16 they'd otherwise look at.

17 THE COURT: But, look, if you win -- if you win
18 seriatim, you know, one at a time, am I still understanding
19 that the first win would cause the Census Bureau to have to
20 do some sort of recalculation?

21 MR. MILLER: Absolutely.

22 THE COURT: And then that would end; and then we
23 would do motion number two, and they would do a second
24 calculation; and then motion number three would be a third
25 calculation. So my question is really just a different

1 context. Instead of different funding allocations, if we
2 take these one at a time and you win, the agency is doing
3 several different mathematical calculations; if we took them
4 all at once and we figured out which ones, if any, you win on
5 and which ones you lose on, there would be a single
6 calculation that would capture all of your victory if you won
7 on any claims; is that correct?

8 MR. FINK: Yes, that is correct, and I would point
9 out, though, that the first issue -- if we win on demolition,
10 the calculation is a one-page calculation that somebody can
11 do in 15 minutes, and I'm not overstating that. I mean, they
12 will want to go through some other measures, but it is just,
13 how do you treat a certain set of numbers they already have.
14 And it -- so I don't see it as a burden on the agency to have
15 to calculate three times.

16 Now, I'd also say, I'm not sure we would do this as
17 three motions. When this motion is completed, we probably
18 then would go to a full resolution on the merits of the total
19 package that remains after that, but we haven't -- the Court
20 would have to look to that and decide how it wanted to
21 address it.

22 THE COURT: Mr. Daniel, I'm working from home today
23 and I don't have your motion in front of me, but your
24 proposal is to complete the administrative record by the end
25 of this month and then, remind me, to do what?

1 MR. DANIEL: So after that, plaintiff would be free
2 to file a renewed motion for summary judgment at any time. I
3 mean, they could file it the same day, if they wanted,
4 although, I assume they would want time to look at the
5 record, which is why we are here in the first place. But
6 they can file it at any time, and after that, defendants
7 would have 30 days to both file a unified response and a
8 cross motion for summary judgment, and then there would be
9 another 30 days for plaintiff to file their cross response
10 and reply, and then 15 days, at the end, for the defendant to
11 file its cross reply.

12 THE COURT: Mr. Fink, that seems like a pretty
13 compressed schedule that, in the big scheme of things, is not
14 all that different from your proposed schedule.

15 MR. FINK: Well, Your Honor, here's the -- as we
16 see the difference, what they're talking about is essentially
17 a 75-day briefing schedule that begins May 13th. And I -- I
18 mean, May 31st. We're talking about is essentially about a
19 three-week schedule between their 12 days and our week or so
20 to respond, to get to a -- a decision -- an opportunity for
21 the Court to address a very important part of the case, so
22 that we could conceivably have a positive outcome, if we
23 prevailed, in a matter of maybe two months from now. Look,
24 it may be a little longer, just in terms of the Court's
25 schedule.

1 But their schedule actually adds about two months
2 before we would get -- we could possibly get to judgment.
3 And every day counts to the City. It's a very -- and just to
4 be clear, one of the things -- and maybe I haven't been clear
5 about this, our concern about the census count and the
6 population estimates involves many components, but the most
7 important ones are, one, of course, the actual allocation of
8 funding which, we don't know, it is like a black box, we
9 don't know when it is done or how it is done, we know it is
10 just done.

11 But the other thing is, the City is trying to
12 project an accurate message to the public and to potential
13 investors in the City, that we are growing, and because the
14 Census Bureau has decided that 8,000 people moved out of the
15 City, because we demolished 4,000 residences which were
16 unoccupied, because of that message, we literally -- the
17 demolitions are the difference between the City growing and
18 contracting, in terms of the public message. So we're very
19 sensitive to getting the public message out as quickly as
20 possible, that the City is not losing population. We have
21 more utility hookups, we have more people paying taxes, we
22 have more people paying -- buying -- getting water from our
23 water system, and Detroit Edison gets more. So we want that
24 message to be consistent, and every day that goes by is a day
25 that we care about. That's why the City asked us to file

1 this right away. That's why they asked us to pick off this
2 one issue. That's why we drafted the complaint the way we
3 did, with separate counts, so that we could address this
4 demolition issue, because it's the single -- well, I don't
5 want to get to the merits, but it's an unusual issue that we
6 think can be disposed of summarily.

7 We also think it's possible that when the Census
8 Bureau closely reviews what we have presented, they may
9 change their mind on this subject. We are hoping that they
10 do. We don't want to delay the time when they have to do
11 that or consider that.

12 THE COURT: What has the City done, outside of this
13 lawsuit, to get the Census Bureau to look at this? And I say
14 that in all seriousness, in the sense that the City is very
15 persuasive, they have a lot of persuasive advocates in
16 Congress, they have a very good relationship with the
17 President of the United States. Have these other avenues
18 been undertaken?

19 MR. FINK: Yes, and, in fact, to some extent,
20 successfully. That is, we are trying to work more
21 cooperatively and closely with the bureau through the state
22 demographer. And by the way, a couple years ago, I didn't
23 know there was such a thing as state demographer. But we
24 work with the state demographer, who provides certain data
25 that the Census Bureau relies on. State demographer also has

1 gotten information for us, appropriately, through
2 the -- through their contact with the Census Bureau. And
3 through legislative means, we have reached out to the -- our
4 congregational representatives, including Senator Peters, and
5 they have, in fact, added language to the last appropriations
6 bill that explicitly -- I don't know if the Court is familiar
7 with boilerplate in appropriations, but although Congress
8 binds agencies through authorizations in appropriations, when
9 they're really only funding things they previously
10 authorized, Congress sometimes adds boilerplate -- what they
11 call boilerplate language in their reports, saying, this is
12 what we want the agency to do. And we did persuade -- or I
13 shouldn't say we, but through our working with the -- with
14 our representatives and some cooperation in various different
15 ways, we did get that language added to the last
16 appropriation bill, saying, for example, that administrative
17 records should be relied on more, when possible. They would
18 like the agency -- I don't wanna -- I'm just paraphrasing, so
19 I apologize for that. But that the bureau should look to
20 reliable administrative records to try to make the population
21 estimates more accurate.

22 Now we work with, and we didn't previously, we
23 worked very actively with the Federal State Cooperative for
24 Population Estimates, and through that, one very positive
25 thing that has occurred is, we learned why they were

1 underestimating the amount of our permitted construction.
2 And in the last round of population estimates, there were
3 some permits that were not accepted, and now they are being
4 accepted, so we are making progress.

5 This one subject of demolition, so far at least, we
6 have not been able to persuade the bureau. And to be clear,
7 we have reached out to counsel and asked counsel when they
8 asked for more time, we -- we agreed to more time, in part
9 because we said we hope that this time can be used by the
10 bureau, because the bureau is about to issue its next set of
11 population estimates next week. Literally, next week, a new
12 round of estimates it going to come out. And when they do
13 what's called the 2000 -- the vintage 2023 estimates, which
14 are done in 2024, when they release the 2023 -- the
15 vintage 2023 estimates, they will also issue any corrections
16 that they find to the 2021 and 2022 estimates.

17 And we've been working with them and hoping that
18 they will, among other things, consider this, our brief,
19 frankly, in this case, regarding demolition and factor that
20 into those estimates. And, by the way, if they do, they
21 could end up mooted this motion.

22 But -- so, yes, Your Honor, we are pursuing -- we
23 have reached out -- not counsel, but the City, through
24 appropriate means, has reached out to the agency, including
25 the director of the commerce department -- the secretary of

1 commerce, I'm sorry, and we're doing the best we can, through
2 every means we have available to us. But time is -- time is
3 of the essence, and we would really like to have this one
4 issue teed up and considered by the Court as soon as
5 possible.

6 THE COURT: Okay. I think I've got a picture of
7 what is going on here. I appreciate the arguments. What I'm
8 going to do is move this forward in a way that I think is
9 respectful of the City's legitimate need to move ahead with
10 reasonable speed, but also is, in my view, the most efficient
11 way to resolve this.

12 So what I'm going to do is not grant all of the
13 relief that the government seeks, but adopt a schedule where
14 we take this all at once. So the government will file the
15 administrative record -- compile it and file it, in full, by
16 the May 31st date. I'm going to terminate, without
17 prejudice, the pending motion for summary judgment. All
18 motions for summary judgment, cross and otherwise, will be
19 filed by June 20th. Responses by July 11th. Replies by
20 July 25th. And I will, to the best of my ability, move this
21 for a hearing date sooner than it otherwise will be. So we
22 will all compromise and adjust our schedules and understand
23 that we're balancing a number of different factors here and
24 this strikes me as the most appropriate way to proceed.

25 So I'll enter a short order confirming this. It

1 sounds like a very interesting case.

2 Mr. Fink, will you let us know, right away, if what
3 comes out next week ends up mooted or mooted any part of
4 your complaint or requiring any sort of an amendment or
5 anything like that, expanding or mooted? Just let us know
6 if anything needs to be done with that.

7 MR. FINK: We will, Your Honor, yes.

8 THE COURT: All right. Mr. Fink, anything else on
9 behalf of the City today?

10 MR. FINK: No, Your Honor. Thank you.

11 THE COURT: Mr. Daniel?

12 MR. DANIEL: Yes, one thing, Your Honor. We
13 requested in our motion that the Court waive our obligation
14 to file an answer on May 31st, so that we could produce this
15 record on that date and move forward to summary judgment. We
16 believe that the parties can brief those summary judgment
17 motions fully on the basis of the record, and that filing an
18 answer would just take up the agency's time that it could
19 otherwise use in producing this record, without any benefit
20 for this litigation.

21 THE COURT: I saw that the City said that it's
22 important to understand precisely what the defendant's
23 position is. I mean, filing an answer is generally in the
24 ordinary course of litigation, isn't it? I mean, I've got to
25 confess, I don't sit in the District of Columbia, so I don't

1 see a ton of APA cases, but aren't answers ordinarily filed
2 in APA cases just like in other cases, or no?

3 MR. DANIEL: Sometimes, Your Honor, but we often do
4 request that answers get waived, and courts often do grant
5 that, because, generally, they are resolved in this same way,
6 which is, there's cross motions for summary judgment based on
7 the administrative record and that resolves all claims in the
8 case and that's the end, so the answer is, ultimately, not
9 needed.

10 I did see plaintiff's response where they said that
11 an answer would be helpful, but I was unable to gather from
12 their response why they thought that would be the case, which
13 parts of the complaint they thought, if answered, would move
14 the litigation forward in a different way than otherwise. So
15 our position is still that it would just be more efficient to
16 move straight into summary judgement, without an answer.

17 THE COURT: Mr. Fink.

18 MR. FINK: Yes, yes. Thank you. Until we see the
19 answer, we don't know if it will be helpful, but we do
20 believe, especially with the now shortened timeframe for our
21 ultimate motions for summary judgment on all matters, it
22 would be extremely helpful for us to have that response. We
23 make a lot of allegations in our complaint, and we believe
24 that they are all true, but some are based on our inferences
25 about what the agency is doing, why the agency is doing it.

1 The agency's response is critically helpful to us -- could be
2 helpful. They may deny some of the things that we take as
3 articles of faith, that we're certain that's what they are
4 doing. They may admit some of the things that are important
5 to our ability to explain what the agency is doing.

6 The court rules don't create an exception for
7 Administrative Procedures Act cases for answers. I have
8 never seen an exception for it. And certainly, there are
9 some instances where there's absolutely no disagreement of
10 fact and so the parties say, we don't need any -- we don't
11 need to have an answer. And they asked us, graciously, at
12 the beginning, if we would be willing to give them -- to not
13 seek an answer. They weren't impolite about it; they were
14 appropriate about it. But from our perspective, we look
15 forward to an answer, because if one or two things are
16 admitted that are helpful to us in one of our three
17 substantive areas, that's important to us. And in an
18 administrative procedure, where you don't have traditional
19 discovery, you don't have the ability, otherwise, to address
20 some of these factual issues, the answer could be extremely
21 helpful to us and extremely important.

22 And, by the way, it also might not be helpful to
23 us. We may find out that there's matters at issue that we
24 don't know are at issue, that we don't expect to be in
25 dispute; but we need to know. I don't know what they agree

1 with.

2 THE COURT: All right. I'm persuaded that an
3 answer could help even streamline the summary judgment
4 briefing, even if it just eliminates a few things that the
5 plaintiff don't have to spend time trying to establish.

6 So I will have the -- I'm not going to excuse the
7 answer obligation. We'll file that on -- with the
8 administrative record on the 31st.

9 I don't want to come back and deal with the issue
10 of how many pages we need, so let's talk about that right
11 now.

12 Mr. Fink, how many pages do you think you need in
13 your opening motion for summary judgment?

14 MR. FINK: Your Honor, this is the point at which I
15 defer to the wiser, Mr. Miller.

16 THE COURT: It's because you know that what's
17 coming back, no matter what you answer is, my response is
18 going to be unpleasant and you would rather have that
19 directed toward Mr. Miller than yourself.

20 So, Mr. Miller, how many pages do you think you
21 need for your motion?

22 MR. MILLER: Your Honor, we worked hard to craft a
23 brief that was 25 pages for one of the three substantive
24 claims. I believe, 75 pages, so that we can devote the same
25 number pages to the other two substantive claims, would allow

1 us to fully brief the issue and provide all the facts
2 necessary.

3 MR. FINK: And, Your Honor, to be clear, my fear
4 was not that Mr. Miller would have to be deal with the
5 rejection from you, my fear was that I would have to deal
6 with Mr. Miller after this call, if I didn't adequately ask
7 for enough pages.

8 THE COURT: All right. Mr. Daniel, what is your
9 belief on how many pages are necessary?

10 MR. DANIEL: Your Honor, it's hard to say, without
11 knowing what's in the administrative record, but I do think
12 between 50 and 75 would be a reasonable range.

13 THE COURT: Okay. Sixty pages for the opening and
14 response briefs, and 20 pages for the reply. That's way
15 longer than we usually do.

16 Now, while -- let me state the obvious here. While
17 I'm giving you that many pages, there are no points to be
18 made for actually using them. And a friendly reminder, when
19 I used to have your job -- I tell this story all the time --
20 it would kill me to slice even a single sentence because I
21 thought my work product was so damn brilliant that the court
22 would be deprived of my thinking.

23 Sitting on the other side, I can tell you that as a
24 human being, when you get to about page 40, you need to make
25 a Starbuck's run, recaffeinate and keep going. So while you

1 have these pages, your clients will be best served to the
2 extent you're able to be concise, punchy, and get right to
3 the point, and dumb it down for me, so that I can understand
4 it. Okay.

5 So we'll get a short order entered with these
6 deadlines. I'm looking forward to working with the fine
7 counsel on both sides of this case, and the interesting and
8 important issues here.

9 Mr. Fink.

10 MR. FINK: Your Honor, I apologize, but I think
11 there may be something -- there's something I'm not clear
12 about and I want to make sure we are.

13 As I understand it, substantive briefs are due,
14 simultaneously, on June 20th.

15 THE COURT: Yes. The motions -- you can file
16 before then, if you want, but --

17 MR. FINK: Right.

18 THE COURT: -- it sounds like each side wants to
19 file an affirmative motion for summary judgment on their own
20 behalf.

21 MR. FINK: Right, and those are limited to 60
22 pages.

23 THE COURT: Right.

24 MR. FINK: Responses are due on July 11th, and
25 those are limited to 20 pages?

1 THE COURT: I was actually thinking 60, but --

2 MR. FINK: I'm sorry. Okay. Okay.

3 THE COURT: And then the replies are 20 pages, but
4 again --

5 MR. FINK: We will do our best. We will do our
6 best to not use all the pages.

7 THE COURT: Especially in the responses, because in
8 a case like this, what you end up with is the arguments are
9 meeting each other, you do not need in your responses to
10 repeat stuff you've already said in your opening motion.
11 This is a case where the responses, and I urge you strongly
12 to just say, we addressed this point in our opening motion
13 and we don't have anything new to say. The responses should
14 really just be responding to arguments that the other guys
15 have made. So please keep that in mind on the responses.
16 Okay.

17 MR. FINK: Your Honor, if I may have the Court's
18 indulgence for a minute or less anecdote.

19 When I was first practicing and -- or actually I
20 was a few years into the practice, we finally had a computer
21 that would allow us to use alternative fonts. And I was very
22 excited to tell my partner, Dan Cooper, who was much more
23 experienced than me. And I said -- we were filing a brief in
24 the Court of Appeals, but I had some great news, if I used
25 New Times Roman font, I could fit like 40 percent more words

1 on the page, and so in 20 pages, I could submit a lot more.

2 And his response to me was, David, you are an
3 idiot.

4 And I said, why do you say that?

5 He said, do you think those rules are to protect
6 you? Those rules are to protect the poor judges who have to
7 read the nonsense that you send to them. And if you send
8 them 40 percent more, you haven't done them a favor.

9 THE COURT: Well, that's good advice.

10 MR. FINK: Yep. We will try, Your Honor.

11 THE COURT: Okay. Thank you very much guys. I
12 look forward to working with you. I appreciate your time
13 today. See you later.

14 MR. FINK: Thank you, Your Honor.

15 MR. DANIEL: Thank you, Your Honor.

16 (Proceedings concluded at 11:22 a.m.)

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C E R T I F I C A T I O N

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of CITY OF DETROIT vs. UNITED STATES DEPARTMENT OF COMMERCE, Case No. 24-10775, on Friday, May 10, 2024.

s/Robert L. Smith

Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 05/20/2024
Detroit, Michigan